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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

In re A.E., a Person Coming Under the  
Juvenile Court Law.

H046013  
(Monterey County  
Super. Ct. No. 18JV000544)

THE PEOPLE,

Plaintiff and Respondent,

v.

A.E.,

Defendant and Appellant.

**I. INTRODUCTION**

Following a contested jurisdictional hearing, the juvenile court sustained a Welfare and Institutions Code section 602 petition alleging that the minor, A.E., committed first degree burglary (Pen. Code, § 459)<sup>1</sup> and petty theft (§ 484, subd. (a)). The court also found true the allegation that another person, other than an accomplice, was present in the residence during the commission of the burglary (§ 667.5, subd.(c)(21)). The court continued the minor as a ward of the court for an open period of time, removed him from the custody of his parents, and committed him to the custody

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise specified.

and control of the probation officer for placement in a suitable setting, which the court ordered to be in the minor's home. The court imposed various conditions of probation, including serving 52 days in custody, which was credit for time served.

On appeal, the minor contends there is insufficient evidence to sustain the juvenile court's finding that he committed petty theft. For reasons that we will explain, we will modify the judgment.

## **II. BACKGROUND**

### **A. *Prosecution Case***

On May 26, 2018, Pedro Perez, Miguel Hernandez, Jr., Julian Hernandez, and two other friends were returning to the Hernandez home in Salinas after a trip to Monterey. When they pulled up to the house, a Honda Pilot and a truck were in the driveway. Perez observed that the garage door was open about a foot and saw the minor standing in between the two vehicles in the driveway. The minor started "running right across the car from the driveway." Perez also saw another individual running from the house.

As the minor ran from the property, the group of friends decided to chase after him in their car. At one point, one of the friends got out of the car to chase the minor on foot. The minor eventually stopped running and the group waited for the police to arrive. While they were waiting, someone asked the minor what he was doing at the Hernandezes' home, and the minor replied that he was trying to get some change. Perez understood the minor's statement to be an admission that he stole some change.

Miguel Hernandez, Sr. was watching television inside his home and was alerted to what happened by his son. Hernandez, Sr. exited his house and saw that the garage door was open "about two feet . . . ." The garage was attached to the house and had been closed. Hernandez, Sr. saw that a bicycle had been moved about five feet toward the front of the garage. In addition, his wife's car, the Honda Pilot, "looked open and it looked like it had been searched . . . ." His wife always parked her car in the garage. The

garage door opener was normally kept in the car, but Hernandez, Sr. did not see the opener where his wife usually kept it. The garage door opener was later found.

Hernandez, Sr. testified on direct examination that he did not notice that any change was missing from his vehicle. On cross-examination, Hernandez, Sr. testified that he did not know if his wife had change in her car or not, but she usually kept change in there. Immediately thereafter, he testified that his wife's car did have change missing from it.

**B. *Defense Case***

The minor testified on his own behalf. The minor stated that he was walking to a friend's house with Isaac Q. when he saw a Honda Pilot. The minor went into the Pilot, which was unlocked. Once inside, the minor looked for money. He was inside the car for about three minutes when he was startled by the garage door opening. The minor got out of the car and then saw a different car pull up. The minor ran.

The minor testified that he never went into the garage. He also stated that Isaac did not open or go into the garage. Isaac was down the street waiting for the minor while the minor was inside the Pilot.

The minor admitted on cross-examination that he lied to the police. The minor told police regarding Isaac, “ ‘I don't know who that guy is; never met him before in my entire life.’ ” The minor lied because he was not supposed to “hang out with” Isaac. The minor admitted that he was willing to lie to protect himself and willing to steal because he wanted some pocket change, but he denied that he had stolen anything from the car. The minor testified that if there had been money in the car, he would have taken it.

**C. *Petition, Findings, and Disposition***

A Welfare and Institutions Code section 602 petition was filed on May 30, 2018, alleging that the minor committed first degree residential burglary (§ 459) and petty theft. (§ 484, subd. (a)). The petition also alleged that another person, other than an accomplice, was present in the residence during the commission of the burglary (§ 667.5,

subd. (c)(21)). After a jurisdictional hearing, the juvenile court found all of the allegations true.

At the July 16, 2018 dispositional hearing, the juvenile court continued the minor as a ward of the court for an open period of time, removed him from the custody of his parents, and committed him to the custody and control of the probation officer for placement in a suitable setting, which the court ordered to be in the minor's home. The court imposed various conditions of probation, including serving 52 days in custody, which was credit for time served.

### **III. DISCUSSION**

The minor contends that insufficient evidence supports the juvenile court's finding that he committed petty theft. The minor argues that "the evidence presented at the . . . hearing was insufficient for a finding that [he] actually took possession of the property of another and carried it away." The Attorney General counters that there was sufficient evidence to support the juvenile court's finding based on Hernandez, Sr.'s testimony, reasonable inferences therefrom, and reasonable inferences from the other evidence presented.

#### **A. *Evidence Presented of Petty Theft***

Three witnesses testified at the jurisdictional hearing. Perez and Hernandez, Sr. testified for the prosecution; the minor testified on his own behalf.

Perez testified that he saw the minor run from a car parked at the Hernandezes' property. After the minor was detained by Perez and his friends, someone asked the minor what he was doing at the Hernandezes' home. Perez testified that the minor stated "that he was trying to get some change." The following exchange then occurred:

"[PROSECUTOR]: And he said he was getting some change, right?"

"[PEREZ]: Yes.

"[PROSECUTOR]: So he admitted stealing some change; is that what you took it as?"

“[PEREZ]: Yes.”

The homeowner, Hernandez, Sr., testified regarding the petty theft as follows:

“[PROSECUTOR]: And after [your son] came in, what did you do?

“[HERNANDEZ, SR.]: I went out with him to look at the car that was open. And then also the garage was open.

“[PROSECUTOR]: When you had last seen the car, was it not open?

“[HERNANDEZ, SR.]: The car, it looked open and it looked like it had been searched, like everything had been searched in there.

“[PROSECUTOR]: It looked to you like someone had gone through your car?

“[HERNANDEZ, SR.]: Yes, that they had gone through it.

“[PROSECUTOR]: Was anything missing?

“[HERNANDEZ, SR.]: Well, the person that drives it is my wife, [and] she indicates that she doesn’t lose anything of value.

“[DEFENSE COUNSEL]: Objection, hearsay, move to strike.

“THE COURT: Well, as to what [his] wife said, that would be hearsay, so that part will be stricken. His observations obviously are not hearsay.

“[¶] . . . [¶]

“[PROSECUTOR]: Do you keep the remote control . . . for your garage inside that car?

“[HERNANDEZ, SR.]: Yes.

“[PROSECUTOR]: Was it in there?

“[HERNANDEZ, SR.]: Yes.

“[PROSECUTOR]: Was it disturbed?

“[HERNANDEZ, SR.]: I think they probably would have had to use that to open the garage. There’s no other way.”

Later, the following exchange occurred:

“[PROSECUTOR]: Did you ever notice any change missing from your vehicle?

“[HERNANDEZ, SR.]: No.”

As relevant here, Hernandez, Sr. testified as follows on cross-examination:

“[DEFENSE COUNSEL]: [Y]ou said that you keep your garage door opener in the car; is that correct?

“[HERNANDEZ, SR.]: Yes.

“[DEFENSE COUNSEL]: And it was your wife’s car that was the one that was missing change from it?

“[HERNANDEZ, SR.]: I don’t know if she had change or not. But she usually does have change in there.

“[DEFENSE COUNSEL]: It was your car that had change missing from it?

“[HERNANDEZ, SR.]: No, it was my wife’s car.

“[DEFENSE COUNSEL]: And the garage door opener in that car, you still have that same garage door opener?

“[HERNANDEZ, SR.]: The control?

“[DEFENSE COUNSEL]: Yes.

“[HERNANDEZ, SR.]: Yes.

“[DEFENSE COUNSEL]: The one that you keep in that car?

“[HERNANDEZ, SR.]: Uh-huh.

“[DEFENSE COUNSEL]: Now, on the day of the incident, you spoke with law enforcement, correct?

“[HERNANDEZ, SR.]: Yes.

“[DEFENSE COUNSEL]: And when you spoke with law enforcement, isn’t it true that you told them that the garage door opener was actually missing?

“[HERNANDEZ, SR.]: Yes, because I looked inside the car and I didn’t see it where my wife normally has it.

“[DEFENSE COUNSEL]: But you found it?

“[HERNANDEZ, SR.]: Yes, it was found, I think, by one of the officers.”

The minor testified that he went into the Pilot, which was unlocked, and “looked around for money.” He was inside the car for about three minutes before he got out when the garage door opened. On cross-examination, the minor denied that he stole anything from the car but admitted that if there had been money in the car, he would have taken it.

**B. *Juvenile Court’s Finding on Petty Theft Allegation***

The juvenile court stated that Perez and Hernandez, Sr. were “very credible witnesses.” The court found “that there was a petty theft, from the testimony of Mr. Hernandez, that there was change missing, and at least for a short time, until the police returned it, the garage door opener was missing.” The court stated that it “did not find [the minor’s] testimony credible or even testimony that made any sense.”

**C. *Standard of Review***

“ ‘The standard of proof in juvenile proceedings involving criminal acts is the same as the standard in adult criminal trials.’ [Citation.]” (*In re Cesar V.* (2011) 192 Cal.App.4th 989, 994.) The People must prove beyond a reasonable doubt that the minor committed the offense alleged in the Welfare and Institutions Code section 602 petition. (*People v. Trujeque* (2015) 61 Cal.4th 227, 247; Welf. & Inst. Code, § 701.)

On appeal, we must determine “ ‘whether there is substantial evidence to support the conclusion of the trier of fact; it is not whether guilt is established beyond a reasonable doubt. [Citation.]’ ” (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1372.) “[T]he critical inquiry is ‘whether, after reviewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ [Citation.]” (*Id.* at p. 1371.)

In undertaking this inquiry, “we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence . . . from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] We presume every fact in support of the judgment the trier of fact could have reasonably deduced from the evidence. [Citation.] If the circumstances

reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.] 'A reviewing court neither reweighs evidence nor reevaluates a witness's credibility.' [Citation.]" (*People v. Albillar* (2010) 51 Cal.4th 47, 60 (*Albillar*).)

" '[E]vidence of each of the essential elements . . . [must be] *substantial*.'" (*People v. Johnson* (1980) 26 Cal.3d 557, 577.) To be " 'substantial,' " evidence "must be 'of ponderable legal significance . . . reasonable in nature, credible, and of solid value.' [Citation.]" (*Id.* at p. 576.) While we review the record in the light most favorable to the judgment, " 'we must resolve the issue in the light of the *whole record* . . . and may not limit our appraisal to isolated bits of evidence.' " (*Id.* at p. 577.) " '[I]t is not enough for the respondent simply to point to "some" evidence supporting the finding, for "Not every surface conflict of evidence remains substantial in the light of other facts." ' [Citation.]" (*Ibid.*)

#### **D. Analysis**

The petition alleged that the minor committed petty theft, specifically theft by larceny. (§ 484, subd. (a).) "The elements of theft by larceny are well settled: the offense is committed by every person who (1) takes possession (2) of personal property (3) owned or possessed by another, (4) by means of trespass and (5) with intent to steal the property, and (6) carries the property away. [Citations.]" (*People v. Davis* (1998) 19 Cal.4th 301, 305.) Taking personal property from the possession of another "is always a trespass . . . ." (*Ibid.*) "If the taking has begun, the slightest movement of the property constitutes a carrying away or asportation." (*Ibid.*)

On direct examination, Hernandez, Sr. testified that he did not notice any change missing from his vehicle. On cross-examination, Hernandez, Sr. stated when asked whether it was his wife's car that had change missing from it, "I don't know if she had change or not. But she usually does have change in there." Defense counsel then asked



whether it was Hernandez, Sr.'s car that had change missing from it, and Hernandez, Sr. responded, "No, it was my wife's car."

Hernandez, Sr. also testified on direct examination that he kept a garage door opener in his wife's car. The prosecutor asked, "Was it in there?" Hernandez, Sr. responded, "Yes." On cross-examination, Hernandez, Sr. testified that he still had the garage door opener that was kept in his wife's car. He also stated that he told police on the day of the incident that the garage door opener was missing "because [he] looked inside the car and [he] didn't see it where [his] wife normally ha[d] it." When asked whether the garage door opener was found, Hernandez, Sr. testified, "Yes, it was found, I think, by one of the officers."

Although the minor admitted that he went into the Honda Pilot and looked for money, he denied stealing anything from the car. The minor testified that he was inside of the car for about three minutes when he was startled by the garage door opening. The minor also denied going into the garage.

On this record, we conclude that there is not substantial evidence that the minor took possession of the Hernandezes' property and carried the property away by moving it, however slightly. Hernandez, Sr.'s testimony regarding the change and the garage door opener in his wife's car was not "of solid probative value." (*People v. Conner* (1983) 34 Cal.3d 141, 149.) Based on our careful review of the record, we can determine from the testimony only that the car had been searched by the minor, there *may* have been change missing from the car, and the minor *may* have temporarily taken and moved the garage door opener. "We may *speculate* about any number of scenarios that may have occurred on the [day] in question. A reasonable inference, however, 'may not be based on suspicion alone, or on imagination, speculation, supposition, surmise, conjecture, or guess work. [¶] . . . A finding of fact must be an inference drawn from evidence rather than . . . a mere speculation as to probabilities without evidence.'" (*People v. Morris*

(1988) 46 Cal.3d 1, 21, disapproved on a different ground in *In re Sassounian* (1995) 9 Cal.4th 535, 543, fn. 5.)

However, we are able to determine from our review of the record that there is “substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the [minor] guilty beyond a reasonable doubt,” of attempted petty theft by larceny, which is a lesser included offense of petty theft by larceny. (*Albillar, supra*, 51 Cal.4th at p. 60.) “An attempt to commit a crime consists of two elements: a specific intent to commit the crime, and a direct but ineffectual act done toward its commission.” (§ 21a.) Perez testified that the minor was in between the cars in the Hernandezes’ driveway and ran from the property when the group of friends pulled up to the home. Both Perez and Hernandez, Sr. testified that the garage door was open. The minor admitted that he went inside the Honda Pilot, looking for money, and that he would have stolen money from the car if he had found any. Moreover, during argument before the juvenile court, defense counsel “submit[ted] that [the minor] is definitely accountable for an attempted petty theft.”

Accordingly, pursuant to sections 1181, subdivision (6),<sup>2</sup> and 1260,<sup>3</sup> we will modify the judgment to reflect that the minor was adjudicated of an attempted petty theft (§§ 664, 484, subd. (a)). (See *People v. Bailey* (2012) 54 Cal.4th 740, 748, fn. omitted [under sections 1181, subdivision 6, and 1260, “ ‘an appellate court that finds that

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<sup>2</sup> Section 1181, subdivision (6) states, in pertinent part: “[I]f the evidence shows the defendant to be not guilty of the degree of the crime of which he was convicted, but guilty of a lesser degree thereof, or of a lesser crime included therein, the court may modify the verdict, finding or judgment accordingly without granting or ordering a new trial, and this power shall extend to any court to which the cause may be appealed.”

<sup>3</sup> Section 1260 states: “The court may reverse, affirm, or modify a judgment or order appealed from, or reduce the degree of the offense or attempted offense or the punishment imposed, and may set aside, affirm, or modify any or all of the proceedings subsequent to, or dependent upon, such judgment or order, and may, if proper, order a new trial and may, if proper, remand the cause to the trial court for such further proceedings as may be just under the circumstances.”

insufficient evidence supports the conviction for a greater offense may, in lieu of granting a new trial, modify the judgment of conviction to reflect a conviction for a lesser included offense' ”].)

### **III. CONCLUSION**

The judgment is modified as follows. The juvenile court's finding on count 2 is modified to reflect that the minor committed attempted petty theft, in violation of Penal Code sections 664 and 484, subdivision (a). The juvenile court is ordered to prepare a new minute order reflecting that count 2 is an attempted petty theft. The judgment is affirmed as modified.

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BAMATTRE-MANOUKIAN, J.

WE CONCUR:

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GREENWOOD, P.J.

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DANNER, J.

*People v. A.E.*  
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